Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2015** *which reads as follows:*

"G.R. No. 160072 ***(George B. Bermejo v. National Labor Relations Commission, PAL Maritime Coproration, and/or Mario Nicolas/Byzantine Maritime Co.).*** –This is a Rule 45 Petition for Review assailing the Court of Appeals (CA) Decision[1] dated 29 May 2003 in CA-G.R. SP. No. 74568, which affirmed the National Labor Relations Commission (NLRC) in NLRC CA No. 031779-02.[2] The NLRC had reversed the Labor Arbiter's (LA) Decision[3] to grant the complaint of petitioner George B. Bermejo (Petitioner) and order the private respondents to jointly and severally pay Petitioner thirty-two thousand four hundred eighty-nine United States Dollars and sixty United States Cents ($32,489.60).[4]

The case originated from an illegal dismissal complaint, and was aptly summarized by the CA, quoting the NLRC, as follows:

> The undisputed facts of the case show that pursuant to a POEA-approved contract, George Bermejo was engaged by PAL Maritime Corporation for and on behalf of its foreign employer, Byzantine Maritime Corporation, to serve as Chief Engineer on board the vessel MV 'FANNIE' for a period of ten (10) months with a monthly basic salary of US$ 1,500.00, fixed overtime of US$ 600.00, allowance of US$ 800.00, and

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[1] *Rollo,* pp. 34-42, penned by Presiding Justice (then-Associate Justice) Andres B. Reyes, Jr., and Associate Justices Bienvenido L. Reyes (now a member of this Court) and Regalado E. Maambong concurring.
[2] Id. at 79-89; 90-91.
[3] Labor Arbiter Jovencio Ll. Mayor, Jr.
[4] *Rollo*, pp. 200-209.

vacation leave pay of US$300.00 per month. He joined up with the vessel on December 14, 2000 but failed to complete the contracted period because of his repatriation on January 23, 2001.

On May 10, 2001 George Bermejo instituted his complaint for illegal dismissal, damages and attorney's fees against the manning agency and its foreign principal. In pursuing his claims, the complainant alleged that immediately following his repatriation, he has reported to the respondent agency and was assured that he would be deployed to the respondent's other vessels to replace an outgoing Chief Engineer, but despite his constant follow-up and the lapse of five (5) months, he was not deployed and was informed that per instructions of the foreign principal, his services were no longer needed and he would not be reembarked (sic) on the respondents' vessels. Complainant claimed that he had performed competently and maintained the smooth operations of the vessel to avoid being off-hired, and that as a consequence of his illegal dismissal, he was entitled to his salaries for the unexpired portion of his contract, rejoining bonus, damages and attorney's fees. Complainant further maintained that the respondents has (sic) indicated 'transfer' as the reason for his sign-off, and averred that the documents submitted by the respondents were self-serving and fabricated. He denied that the detention of the vessel was his fault and alleged that the defects of the vessel already existed at the time he took over as Chief Engineer.

Respondents denied that the complainant was illegally dismissed and alleged that he was repatriated upon the request of the owners after the vessel was detained at the Port of Amsterdam for about seventeen (17) days by the Amsterdam Port State Control officers when the vessel lost control in the main engine during maneuvering and resulted in the closing of the channel for six (6) hours. According to the respondents, on December 4, 2000, the company's Designated Personnel Ashore had sent a telex/fax circular to the fleet's vessels to check on and advice on the state of certain equipment on board and on December 20, 2000 the Master of M/V 'FANNIE' had confirmed that all the items were in order except Control List which were rectified upon discovery. However, when The Port State Control authorities boarded the vessel deficiencies were still found in the vessel's Engine

> Department such as 'fire detection system inoperative and poor knowledge about function testing' and 'oily water separator partly inoperative' and it was recommended that the vessel must not sail with the same master and Chief Engineer, if not the same crewmembers. The respondents claimed that the complainant as the Chief Engineer was responsible for the good maintenance of the main engine operation at sea as well as during maneuverings and that the complainant was fully aware of the huge problems in the Engine Department and even confided to the company's Superintendent Engineer that he would like to sign off form [sp] Amsterdam. It was asserted that the complainant was repatriated to prevent further losses due to the delays incurred while the vessel which was under his responsibility was being detained in Amsterdam, and that it was not the first incident involving the complainant, because while he was on board his previous vessel, M/V Barbara H, the said vessel was also detained due to the complainant's failure to perform his assigned tasks.[5]

We tackle these issues in seriatim, from the core issues to the tangential issues.

First, we find that there was just cause for the dismissal of Petitioner. As the CA Decision bore out, the facts related to the events in Amsterdam cannot be denied. [6] This was a glaring oversight on the part of the LA,[7] as even Petitioner did not deny the events therein. The allegations against Petitioner was not a small matter, which the LA could easily sweep aside as unsupported by evidence.[8] In fact, the annexes of private respondents' position paper, [9] unrebutted by Petitioner as to the material facts, show very well his responsibility for the detention of the vessel at the port of Amsterdam. As the Chief Engineer, Petitioner bore the responsibility for ensuring the performance of the engine, which he himself acknowledged by making a report as to the state of the vessel's parts which he was responsible for. [10] In Amsterdam, he failed in this, which resulted in 6 hours' worth of port closure. This is not a minor incident, as all other vessels in the port were affected and delayed. It is therefore easy to understand how private respondent justified the dismissal of Petitioner for neglect.

The relevant provision on just termination is Article 282 of the Labor Code:

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[5] Id. at 35-36.
[6] Id. at 40.
[7] Id. at 206.
[8] Id. at 206.
[9] Id. at 110-121.
[10] Id. at 141-143.

> Termination by employer. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

As stated by the CA, the detention of the vessel, wrought by the failure of Petitioner as Chief Engineer, establishes the justification for his termination as gross negligence under paragraph (b) of Article 282.[11] To this we agree.

Second, the NLRC took note that the Petitioner did not refute the reports made about the incident at Amsterdam.[12] Significantly, Petitioner attacked the evidence presented based on the fact that it was dated after he filed the illegal dismissal case, but did not contest its contents. As the NLRC aptly stated, this does not render the documents any less credible, nor does it lead to an inference that the events adverted to by the documents did not occur.[13] There is no provision under the rules of evidence that invalidates evidence ipso facto due to its production after the filing of a complaint.

Third, Petitioner cannot rely on prior acknowledgments of his performance as basis to conclude that he was unjustifiably dismissed. Section 34 of Rule 130 of the Rules of Evidence states that "[e]vidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time[.]" Thus, that he was a prior well-performing employee did not rebut the evidence of negligence presented against him.

Finally, it must be said that private respondents did not follow the proper procedure for dismissing an employee for cause. In fact, the position paper did not contain any indication that Petitioner was made explicitly aware of the fact that he was being dismissed, and the reasons for the dismissal.

[11] Id. at 41.
[12] Id. at. 86.
[13] Id. at 86.

We discussed the effect of this in the recent case of *Unilever v. Rivera*, which we must reiterate here.

> Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states:
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> Section 2. Standard of due process: requirements of notice.
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> — In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.
>
> In case of termination, the foregoing notices shall be served on the employee's last known address.
>
> King of Kings Transport, Inc. v. Mamac detailed the steps on how procedural due process can be satisfactorily complied with. Thus:
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> To clarify, the following should be considered in terminating the services of employees:
>
> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

> (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
>
> (3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[14]

Here, as in the *Unilever* case, there was a violation of the employee's right to statutory due process despite the existence of just cause to terminate the employee. Similarly therefore, this case warrants the payment of indemnity in the form of nominal damages. In *Unilever*, using *Agabon v. NLRC*[15] as basis, ₱30,000.00 was awarded to the employee. Since Petitioner here was unable to serve even a year of his contract, we set the nominal damages at ₱30,000.00 as well.

To write finis to this case, we must likewise note the apparent attempts at transferring Petitioner to other vessels that did not bear fruit due to the spectre of the incident at Amsterdam. Instead of dismissing him outright, private respondents gave him hope of re-employment by dallying contracts in front of him and subsequently cancelling it.[16] This practice cannot be condoned. Thus for the period of time that he was made to sign contracts until the point of cancellation, he cannot be considered as terminated. The cancellation for the two subsequent contracts was dated 16 March 2001 and 29 November 2001 respectively.[17] He must therefore be compensated from his sign-off date of 23 January 2001 to 29 November 2001, computed on the basis of his contract and wage account.[18]

Let this decision serve as a reminder for employers to follow the procedures indicated by law in the dismissal of their employees, and not to dangle hope upon hope to those employees that they actually intend to terminate.

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[14] Unilever v. Rivera, G.R. No. 201701 , 3 June 2013.
[15] G.R. No. 158693, 17 November 2004.
[16] *Rollo*, pp. 96-98.
[17] Annex I, K, Rollo, p. 98.
[18] *Rollo*, pp. 93, 95.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP. No. 74568 are **AFFIRMED with MODIFICATIONS**. Private Respondents **PAL Maritime Corporation, Mario Nicolas** and **Byzantine Maritime Company** are jointly and severally hereby directed to pay **George B. Bermejo** the following:

a) ₱30,000.00 as nominal damages; and

b) His wages pursuant from 23 January 2001 to 29 November 2001.

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court

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