



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ANICETO B. OCAMPO, JR.,
Petitioner,

G.R. No. 232062

Present:

-versus-

**INTERNATIONAL SHIP CREW
MANAGEMENT PHILS. INC.
(currently: D' AMICO SHIP
ISHIMA PHILS. INC.), ISHIMA
PTE. LTD., NORA B. GINETE,
and VICTOR C. VELONZA,**
Respondents.

LEONEN, J., Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., JJ.

Promulgated:
April 26, 2021

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DECISION

LEONEN, J.:

A vessel's Master and Captain who discriminates against crew members on the basis of their national and ethnic origin may be validly dismissed on the ground of serious misconduct.

This Court resolves a Petition for Review seeking to set aside the Court of Appeals Decision¹ and Resolution² dismissing the petition for certiorari filed by Aniceto Ocampo, Jr. (Ocampo). Ocampo sought to annul the National Labor Relations Commission's Decision³ and Resolution⁴

¹ *Rollo*, pp. 56–66. The August 30, 2016 Decision was penned by Associate Justice Zenaida T. Galapate-Laguilles, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Victoria Isabel A. Paredes of the Special Tenth Division, Court of Appeals, Manila.

² *Id.* at 68–69. The May 24, 2017 Resolution was penned by Associate Justice Zenaida T. Galapate-Laguilles, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Victoria Isabel A. Paredes of the Former Special Tenth Division, Court of Appeals, Manila.

³ *Id.* at 111–123.

which affirmed the Labor Arbiter's Decision dismissing his complaint for illegal dismissal and denying his claim for damages.⁵

Ocampo was hired by International Ship Crew Management, Philippines, Inc. (International Ship Crew Management), now called D'Amico Ship Ishima Philippines, Inc., as Master and Captain of MT Golden Ambrosia, an oil and chemical tanker vessel flying under the Singaporean flag. He was engaged for six months with a monthly salary of US\$12,900.00.⁶

On July 25, 2012, International Ship Crew Management deployed Ocampo to Singapore to join the crew of MT Golden Ambrosia. He boarded the vessel on July 29, 2012 and took command of it upon their arrival in Singapore on August 8, 2012. As Master, Ocampo found infirmities which were left unattended by the vessel's previous captain. Thus, the Ship Management Team, composed of Ocampo, the Chief Officer, and the Chief Engineer prepared a defect list and submitted it to International Ship Crew Management's office in Singapore.⁷

When the vessel arrived at a port in China, the crew—led by the Chief Officer—started unloading its chemical cargo, methanol.⁸ However, the operation was interrupted when the person-on-duty at the unloading port frantically called for the Chief Officer to stop because there was an apparent over-discharge of methanol. It was soon found out that the Chief Officer had a miscalculation. He informed Ocampo of the situation, who then made arrangements to pump the excess methanol back into the vessel.⁹

A week later, Ocampo received an e-mail from Captain Saverio Leboffe (Captain Leboffe), his principal's Marine Safety and Crewing Director, raising several issues such as the over-discharge of methanol. Captain Leboffe also raised Ocampo's alleged racist attitude towards Myanmar¹⁰ crew members, based on the report of Sandra Ross (Ross), representative of the service provider of the Myanmar crew members.¹¹

According to Ross, these crew members were "extremely depressed and they [did] not wish to keep on working."¹² Moreover, Ross stated that "[t]he Myanmar crew felt that they have been treated very poorly and in [an inhumane manner] ever since Capt. Aniceto Ocampo took over the vessel."¹³

⁴ Id. at 125–126.

⁵ Id. at 111.

⁶ Id. at 57.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ *See rollo* p. 227.

¹¹ Id. at 57.

¹² Id. at 227.

¹³ Id.

She further narrated hearing Ocampo shout “profound vulgarities”¹⁴ at the crew. She also received reports that Ocampo called the Myanmar crew “animals.”¹⁵ Moreover, when she went to the vessel with Captain Leboffe to investigate, they were shocked to discover that drinking water was not initially provided, and when it was, Ocampo instructed that the drinking water for the Myanmar crew members be rationed.¹⁶

On September 6, 2012, Ocampo was relieved from his duty at a port in Malaysia. When he did not reply to the e-mail, Ocampo again received a follow-up e-mail the next day from Leslie Wharmby, the crewing director, giving him the “opportunity to defend [his] position as a Master[,]” and to offer an explanation for the issues in which he was involved.¹⁷

After Ocampo was repatriated on September 11, 2012, he filed a Complaint for illegal dismissal against International Ship Crew Management, its Director Nora B. Ginete (Ginete), its former President Victor C. Velonza (Velonza), and its principal Ishima Pte., Ltd. (Ishima) before the Labor Arbiter.¹⁸ In his Position Paper, Ocampo argued that he was not afforded procedural due process when he was terminated from his employment. He also claimed salaries for the unexpired portion of his six-month contract as well as damages and attorney’s fees.¹⁹

For their part, International Ship Crew Management, Ginete, Velonza, and Ishima contended that Ocampo was not entitled to damages and attorney’s fees as he was “dismissed for a just and valid cause and that he was afforded due process since he was informed of the acts or omissions constituting the grounds for termination.”²⁰

Labor Arbiter Edgardo M. Madriaga dismissed the complaint as he found that Ocampo was validly terminated from his employment.²¹

On appeal to the National Labor Relations Commission, its Third Division affirmed the Labor Arbiter’s finding of valid dismissal, but ruled that there was failure to observe procedural due process. Thus, it awarded nominal damages.²² The dispositive portion of the Decision read:

WHEREFORE, the appeal is partly granted. We affirm the valid dismissal of complainant subject to the payment of nominal damages in the sum of P40,000.00.

¹⁴ Id.

¹⁵ Id. at 228.

¹⁶ Id.

¹⁷ Id. at 57–58.

¹⁸ Id. at 58.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

SO ORDERED.²³

Aggrieved, Ocampo filed a Petition for Certiorari before the Court of Appeals, claiming grave abuse of discretion on the part of the National Labor Relations Commission for affirming his dismissal.

The Court of Appeals upheld the National Labor Relations Commission's Decision. It found Ocampo's dismissal valid due to his racist behavior, which constituted serious misconduct.²⁴ Moreover, it found Ocampo grossly negligent for the over-discharge of methanol.²⁵ The Court of Appeals held that Ocampo was validly dismissed as his employer lost trust and confidence in him due to the same incident.²⁶

The Court of Appeals dismissed the petition finding it bereft of merit:

PREMISES CONSIDERED, the *Petition for Certiorari* is **DISMISSED** for lack of merit.

SO ORDERED.²⁷ (Emphasis in the original)

Ocampo moved for reconsideration, but his motion was likewise denied by the Court of Appeals in a Resolution.²⁸

Hence, this Petition.

Petitioner argues that his dismissal due to racist behavior towards Myanmar crew members was not supported by the record nor was it proven by substantial evidence at the time he was dismissed.²⁹ He contends that the Myanmar crew members did not offer sworn statements to testify on the charge of racism against him and only uncorroborated reports by the crew members were offered, which make the allegations hearsay.³⁰

Further, petitioner claims that even if respondents were able to prove the charges by substantial evidence, he was dismissed prematurely even before he could respond. He then offers his own version of the facts, saying that the charge of racism were "categorically disavowed" by the people who

²³ Id.

²⁴ Id. at 61-62.

²⁵ Id. at 63.

²⁶ Id. at 65.

²⁷ Id. at 65-66.

²⁸ Id. at 68-69.

²⁹ Id. at 25.

³⁰ Id. at 27.

initially raised it.³¹ He also maintains that the report on which the charge was based did not exist at the time he was dismissed and only surfaced in respondents' Position Paper before the Labor Arbiter.³²

Moreover, petitioner denies withholding drinking water from the Myanmar crew members, claiming he purchased cartons of bottled water for the crew.³³ He also asserts that the crew members were properly compensated for the overtime work they rendered.³⁴

Petitioner also rejects the charge of gross negligence for the over-discharge of methanol. He argues that the mistake was due to the vessel's Chief Officer, which he cannot be faulted for.³⁵ He also asserts that the Chief Officer, being the next-in-rank to the Master, exercises prerogative independently of the Master, and that the Master's duties are distinct from that of the Chief Officer's. Specifically, he claims that the tasks related to the loading and unloading of cargo are unique and exclusive to the Chief Officer, and not to him as the vessel's Master. He then concludes that he should not be held liable for the acts and omissions of his subordinate.³⁶

Moreover, petitioner argues that the over-discharging of methanol was only a singular event. To be a ground for dismissal, the negligence must be both gross and habitual—more particularly, a repeated failure to perform one's duties for a period of time. "A singular or isolated act of negligence does not constitute a just cause for the dismissal of the employee."³⁷

Finally, petitioner insists that his dismissal on the ground of loss of trust and confidence was erroneous. According to him, the evidence on record does not support the finding of loss of trust and confidence. Moreover, to be a ground for dismissal, such breach of trust must be willful.³⁸ He claims that the arbitrary exercise of the prerogative to dismiss an employee on such ground should not be countenanced.³⁹

In their Comment,⁴⁰ respondents reiterate the Court of Appeals' finding of substantial evidence to conclude that petitioner committed serious misconduct, which is a ground for dismissal, against the Myanmar crew members because of his racist behavior.⁴¹ They claim that the Labor

³¹ Id. at 28.

³² Id. at 30-32.

³³ Id. at 37.

³⁴ Id.

³⁵ Id. at 39.

³⁶ Id. at 39-40.

³⁷ Id. at 44 citing *Talidano v. Falcon Maritime and Allied Services, Inc.*, 580 Phil. 256 (2008) [Per J. Tinga, Second Division].

³⁸ Id. at 45-46.

³⁹ Id. at 46.

⁴⁰ Id. at 539-563.

⁴¹ Id. at 550.

Arbiter, National Labor Relations Commission, and the Court of Appeals all uniformly found that petitioner “fell short of satisfactorily performing his duties and responsibilities as Master of the . . . vessel, which is the responsibility of maintaining a harmonious and congenial atmosphere on board the said vessel.”⁴²

Respondents also dispute petitioner’s claim that the accusations of racism are based on hearsay. According to them, Captain Leboffe had personal knowledge of the Myanmar crew members’ complaints, as he personally talked to the crew when he boarded the vessel, including petitioner who never denied the allegations.⁴³ Aside from this, respondents claim that petitioner was also given another chance to explain his side when Captain Leboffe sent him an e-mail requiring him to explain, to which he did not respond to.⁴⁴

Moreover, respondents reiterate the Court of Appeals’ findings of gross negligence and loss of trust and confidence because of the incident involving the over-discharge of methanol.⁴⁵ Citing the SQE Management System Procedure on Shipboard Organization, respondents assert that it was petitioner’s responsibility as Master to “safely deliver [the] cargo without loss or damage.”⁴⁶ Petitioner also has the “over-all responsibility for the entire operation and for the economic running of the ship and for ensuring that Officers of all departments efficiently discharge their duties.”⁴⁷ Respondents argue that because of petitioner’s “incompetence, ineptitude[,] and inadequacy[,]” they suffered losses due to resulting delays.⁴⁸

Respondents also insist that petitioner, as Master and Captain, occupied a confidential and managerial position.⁴⁹ Thus, he can be removed on the ground of loss of trust and confidence.⁵⁰

As to the finding that procedural due process was not observed, respondents claim that there were multiple opportunities given to petitioner to present his side. They aver that on September 7, 2012, Leslie Wharmby, the crewing director, sent petitioner a letter asking his side regarding charges of abysmal conduct and behavior towards his crew.⁵¹ He also underwent investigation for negligence and serious misconduct due to his racist behavior towards the Myanmar crew members while he was still the Master

⁴² Id. at 551.

⁴³ Id. at 552.

⁴⁴ Id. at 552–553.

⁴⁵ Id. at 553.

⁴⁶ Id. at 554.

⁴⁷ Id. at 556.

⁴⁸ Id. at 554.

⁴⁹ Id. at 557.

⁵⁰ Id. at 558.

⁵¹ Id. at 558–559.

of MT Golden Ambrosia.⁵² Finally, they point out that petitioner was given notice of his termination from employment.⁵³

In his Reply,⁵⁴ petitioner insists that substantial evidence did not exist at the time of his dismissal to support it.⁵⁵ He also maintains that he was not given procedural due process, as affirmed by the National Labor Relations Commissions, which decision was not appealed by respondents.⁵⁶ He reiterates his argument that his dismissal on the ground of serious misconduct is invalid, citing the alleged insufficiency of the letters and messages sent to him.⁵⁷ He also claims that Ross' report is mere hearsay.⁵⁸ Finally, petitioner disagrees with the finding of gross negligence and loss of trust and confidence, saying that the responsibility for over-discharging the chemical cargo should fall on the Chief Officer and not on him.⁵⁹ He also denies having willfully breached the trust of his employer.⁶⁰

The issue in this case is whether or not the Court of Appeals erred in upholding petitioner's dismissal from service on the grounds of serious misconduct due to his racist behavior, as well as gross negligence and loss of trust and confidence for the over-discharge of methanol from the vessel he was commanding.

I

Before inquiring into the substantive issue, it must be noted that the petition's grounds for assailing the Court of Appeals Decision and Resolution are largely based on disputing the lower tribunals' findings of fact. As petitioner himself admits,⁶¹ this is not allowed in a Petition for Review under Rule 45.

Rule 45, Section 1 provides that a petition shall raise only questions of law. This rule has been reiterated by this Court in *Pascual v. Burgos*:⁶²

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the

⁵² Id. at 559.

⁵³ Id.

⁵⁴ Id. at 568–586.

⁵⁵ Id. at 570.

⁵⁶ Id. at 570–571.

⁵⁷ Id. at 575–577.

⁵⁸ Id. at 580.

⁵⁹ Id. at 581.

⁶⁰ Id. at 584.

⁶¹ Id. at 13.

⁶² 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

appellate courts will not be reviewed nor disturbed on appeal to this court.⁶³ (Citations omitted)

Petitioner prays for this Court to deviate from this rule and reverse the lower tribunals' factual findings because they are allegedly unsupported by substantial evidence, or have arisen from a misappreciation of facts. However, *Pascual* instructs that "[m]ere assertion and claim that the case falls under the exceptions do not suffice."⁶⁴ Petitioner must show and prove that the case clearly falls under any of the recognized exceptions. Petitioner has not discharged this burden. Thus, the Petition is procedurally infirm.

II

On the substantive aspect, the Petition likewise fails.

Serious misconduct is a just cause for dismissal.⁶⁵ It requires that:

. . . (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.⁶⁶

Petitioner was dismissed on this ground due to his racist treatment of his subordinates. Particularly, petitioner was reported to have called his Myanmar crew members "animals," and worse, he allegedly withheld drinking water from them and rationed it out despite its eventual availability. This pattern of discriminatory treatment against the Myanmar crew members shows that the acts were deliberately done.

More than creating hostile and inhumane working conditions, these incidents also display petitioner's prejudice against his crew members who are of different national and ethnic origin. To refer to other human beings as "animals" reflects the sense of superiority petitioner has for himself and how he sees others as subhuman.

Racial discrimination is a grave issue. Discrimination on the basis of race, nationality, or ethnic origin has deep historical roots, and is a global phenomenon that still exists until today. Racist attitudes have cost numerous lives and livelihoods in the past as in the present, and they should no longer be tolerated in any way. The State has formally made clear its intention to end racial discrimination as early as the 1960's when the Philippines signed

⁶³ *Id.* at 182.

⁶⁴ *Id.* at 184.

⁶⁵ LABOR CODE, art. 297 [282], par. (a).

⁶⁶ *Imasen Philippine Manufacturing v. Alcon*, 746 Phil. 172, 181 (2014) [Per J. Brion, Second Division].

the International Convention on the Elimination of All Forms of Discrimination.⁶⁷ In this Convention, racial discrimination is described as:

...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁶⁸

Evidently, petitioner's misconduct is considered serious, as it is "of such a grave and aggravated character and not merely trivial or unimportant."⁶⁹

That he is the commander of the entire crew worsens the situation. Being the leader of the vessel, it was his duty to inspire a "harmonious and congenial atmosphere on board,"⁷⁰ which he failed to do. His ill treatment of his subordinates is inevitably related to the performance of his duties as Master and Captain, and it shows his unfitness to continue in such capacity. Thus, his dismissal for serious misconduct was done for a just cause.

As to the incident involving the over-discharge of the chemical cargo, petitioner was dismissed on two grounds: first, on the basis of his gross and habitual negligence, and second, on his conduct resulting in loss of trust and confidence.

Gross and habitual neglect of duty is a just cause for dismissal under the Labor Code.⁷¹ In *Cavite Apparel v. Marquez*:⁷²

[T]o be a ground for dismissal... [it] must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances.⁷³

In this case, the incident only occurred once. The records do not show that respondents cited other instances in the past where petitioner was remiss in the performance of his duties. Thus, petitioner is correct to say that he

⁶⁷ The Philippines signed the Convention on March 7, 1966, and the Senate gave its concurrence on May 18, 1967. The instrument of ratification was deposited with the United Nations Secretary-General on September 15, 1967. The Convention entered into force on January 4, 1969. See Presidential Decree No. 966 (1976).

⁶⁸ International Convention on the Elimination of All Forms of Racial Discrimination (1969), art. 1(1).

⁶⁹ *Panaligan v. Phyvita Enterprises*, 811 Phil. 465, 477 (2017) [Per J. Leonardo-De Castro, First Division].

⁷⁰ *Rollo*, p. 550.

⁷¹ LABOR CODE, art. 297 [282], par. (b).

⁷² 703 Phil. 46 (2013) [Per J. Brion, Second Division].

⁷³ *Id.* at 54–55.

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cannot be dismissed on this ground. This singular event cannot be considered as habitual.

The over-discharge of methanol was also used as basis to dismiss petitioner for loss of trust and confidence. This ground for dismissal is often distinguished as between an ordinary rank-and-file employee entrusted with confidence on delicate matters and a managerial employee:

[W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.⁷⁴ (Citation omitted)

Thus, managerial employees may be dismissed on this ground if there is some basis for the loss of confidence. In other words, as long as there is reasonable ground to believe that his responsibility in the misconduct rendered him untrustworthy to continue in his position, there is just cause to terminate his employment.⁷⁵ Petitioner, as the vessel's Master and Captain, is considered a managerial employee as he is in charge of directing the entire vessel as well as commanding its crew.

However, law and jurisprudence require that the loss of trust and confidence must result from a willful breach of trust.⁷⁶

[T]he language of Article [297](c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.⁷⁷

⁷⁴ *Bravo v. Urios College*, 810 Phil. 603, 621–622 (2017) [Per J. Leonen, Second Division] citing *Caoile v. National Labor Relations Commission*, 359 Phil. 399 (1998) [Per J. Quisumbing, First Division].

⁷⁵ *Id.*

⁷⁶ LABOR CODE, art. 297 [282], par. (c). *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

.....
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative

⁷⁷ *San Miguel Corp. v. Gomez*, G.R. No. 200815, August 24, 2020, p. 5 <<https://sc.judiciary.gov.ph/13525/>> [Per J. Hernando, Second Division].

Thus, despite the less restrictive standard applicable to managerial employees on what factual basis must be adduced, loss of trust and confidence must still be based on a willful breach. Petitioner is correct; this is what the law requires. Applying this, it cannot be said that petitioner acted willfully, intentionally, knowingly, or purposely when the chemical cargo was over-discharged from the vessel. It was never shown that petitioner intentionally disregarded his duty to supervise the Chief Officer in the unloading of the cargo, or that he even intentionally ordered the over-discharge. In fact, when the mishap was discovered and reported to him, petitioner was the one who made arrangements to pump back the excess methanol in an attempt to save what could still be saved.

This is not to say that this Court agrees with petitioner's theory that he had no responsibility in the incident and that the blame could be passed on to his subordinate. Certainly, there was carelessness on his part, and it caused respondents financial losses. Nevertheless, such carelessness is not a ground for dismissal. It was not established that it amounted to a willful breach resulting in loss of trust and confidence.

Therefore, petitioner was validly dismissed on the basis of serious misconduct. However, his dismissal cannot be based on gross and habitual neglect of duties nor willful breach of trust and confidence.

III

On the final issue of procedural process, petitioner is correct to point out that respondents never questioned the National Labor Relations Commission's Decision on this issue. While the Labor Arbiter ruled that petitioner's dismissal was valid on both substantive and procedural grounds, the National Labor Relations Commission found that procedural due process was not observed. Hence, it awarded nominal damages in the sum of ₱40,000.00 despite upholding the validity of his dismissal.


Only petitioner questioned the National Labor Relations Commission's Decision, imputing grave abuse of discretion on its finding of a valid dismissal. The Decision's award of nominal damages due to the lack of procedural due process was not assailed by respondents.

Petitioner is correct in his observation that respondents raised their contention on the award of nominal damages only in their Comment before this Court. Respondents never challenged it from when it was awarded by the National Labor Relations Commission, nor when it was affirmed by the Court of Appeals. They cannot raise this as an issue now.

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WHEREFORE, the Petition is **DENIED**. The Court of Appeals' Decision and Resolution are **AFFIRMED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

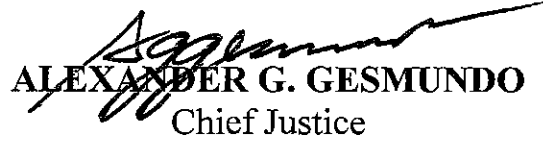
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice