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Shipping and the Law

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, August 3, 2006

Two Supreme Court decisions on dismissal of Filipino seafarer

There are two requirements for the legal dismissal of a Filipino seafarer.

First, is just or valid cause and second, is observance of due process.

There is just or valid cause if the dismissal is in accordance with the offenses and penalties enumerated under Section 33 of the Amended POEA Contract; and/or in accordance with the CBA and/or similar or analogous causes.

There is due process if the seafarer is given two notices. The first notice states the grounds for charges against the seafarer and the date, time and place for the investigation and/or hearing. The second notice, which is issued after a reasonable time from the first notice, states the notice and reasons for the dismissal and a copy thereof is furnished the manning agent.

Below are two recent decisions by the Supreme Court on dismissal of Filipino seafarers.

Author's Note: A more detailed article on dismissal of Filipino seafarers can be downloaded at www.delrosariolaw.com.

Dismissal of Third Engineer held illegal as only evidence is telex transmission

Third engineer was dismissed for "lack of discipline, irresponsible and lack of diligence." Submitted to the NLRC was a telex Chief Engineer's report dated September 10, 1997 detailing the incompetence of seafarer which included:

"...being slack and not caring of his job and duties; resented discipline; several occasion(s) during working hours smoking and having snacks; cannot be trusted to do his job unless supervised perpetually; requires constant pushing and motivation".

The Supreme Court agreed with the ruling of the Court of Appeals and the NLRC that one telex is not enough to discharge the burden of proving that the dismissal was for just cause.

The Court held:

"The rule in labor cases is that the employer has the burden of proving that the dismissal was for just cause; failure to show this would necessarily mean that the dismissal was unjustified and therefore, illegal. The two-fold requirements for a valid dismissal are as follows: (1) The two-fold requirements for a valid dismissal are as follows: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employee's dismissal which is procedural.

"The only evidence relied upon by (vessel) in justifying the (Chief Engineer's) dismissal is the Chief Engineer's

Report dated September 10, 1997. The question that arises, therefore, is whether the Report constitutes substantial evidence proving that respondent's dismissal was for cause.

"Substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify conclusion. As all three tribunals (Labor Arbiter, NLRC and the Courts of Appeals) found, the Report cannot be given any weight or credibility because it is uncorroborated, based purely on hearsay, and obviously merely an afterthought. While rules of evidence are not strictly observed in proceedings before administrative bodies, (vessel) should have offered additional proof to corroborate the statements described therein."

G.R. No. 148893, July 12, 2006, First Division, Justice Ma. Alicia Austria-Martinez, Ponente

Dismissal of Chief Officer held legal as logbook entry given probative value

While the vessel was in Calcutta, India, the gantry crane operators of the vessel intended to strike as their rate of pay was much lower than that of another vessel. The Master asked the Chief Officer (C/O) to talk to the operators to convince them not to proceed with the intended strike. However, the C/O decided to join the strike. The vessel was forced to pay the higher rate.

At the next port, the C/O was terminated. The master recorded in the logbook that the C/O was dismissed from the service for a disciplinary offense. The managers of the vessel talked to the C/O about the incident in Calcutta and the C/O was disembarked from the vessel.

Eight months later, the C/O filed a claim for illegal dismissal.

The Supreme Court ruled in favor of vessel. The Court held:

"...the entry by Capt. Graham in the logbook of the vessel on September 1, 1994 must be given credence and probative weight.

"We agree with the (vessel) that the (seafarer) was dismissed for a just cause. It is not disputed that the respondent joined the strike of the gantry crane operators in their demand for an increase of their pay despite the request of the (vessel) for the (seafarer) to convince the striking crew members to stop their strike and to air their grievances with management upon the arrival of the vessel in Singapore. The (C/O) and the crew members refused and continued with the strike. The loading and unloading of cargoes had to be suspended."

G.R. No. 155389, February 28, 2005, Second Division, Justice Romeo Callejo, Sr., Ponente

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