ANICETO OCAMPO, JR. *v.* INTERNATIONAL SHIP CREW MANAGEMENT PHILS., INC. ET AL.

G.R. No. 232062, 26 April 2021, *THIRD DIVISION*, (Leonen, *J.*)

DOCTRINE OF THE CASE

A vessel's Master and Captain who discriminates against crew members based on their national and ethnic origin may be validly dismissed on the ground of serious misconduct. Racial discrimination is a grave issue. 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.

Evidently, Ocampo's misconduct is considered serious. 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.

FACTS

Aniceto Ocampo, Jr. (Ocampo) was hired by International Ship Crew Management, Philippines, Inc. (International Ship Crew Management), as a Master and Captain of MT Golden Ambrosia, an oil and chemical tanker flying under the Singaporean flag.

The International Ship Crew Management deployed Ocampo to Singapore to join the crew of MT Golden Ambrosia. Ocampo boarded the vessel and took command of it. He eventually found infirmities which were left unattended by the vessel's previous captain. Consequently, when the vessel arrived at a port in China, the crew started unloading its chemical cargo, methanol. However, the operation was interrupted when the Chief Officer was called 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.

A week later, Ocampo received an email from the principal's Marine Safety and Crewing Director raising several issues such as the over-discharge of methanol and his alleged racist attitude towards Myanmar crew members. It was said in the report that Myanmar crew felt extremely depressed, and they did not wish to keep on working. It further stated that the Myanmar crew felt that they have been treated very poorly and in an inhumane manner ever since Ocampo took over the vessel. The report also narrated that Ocampo shouted "profound vulgarities at the Myanmar crew and called them "animals." Moreover, it was discovered that drinking water was not initially provided, and Ocampo instructed that the drinking water for the Myanmar crew members be rationed.

Ocampo was relived from his duty and was repatriated. Subsequently, he filed a Complaint for illegal dismissal against International Ship Crew Management and its director and former president.

The Labor Arbiter (LA) dismissed the complaint as he found that Ocampo was validly terminated from his employment. The National Labor Relations Commission (NLRC) affirmed the LA's finding of valid dismissal. The Court of Appeals (CA) upheld the NLRC's Decision.

ISSUES

(1) Did the CA err in upholding Ocampo's dismissal from service on the ground of serious misconduct due to his racist behavior?
(2) Did the CA err in upholding Ocampo's dismissal from service on the grounds of gross negligence and loss of trust and confidence for the over-discharge of methanol from the vessel?

RULING

(1) **NO.** The elements of *serious misconduct* are:
    (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.

Ocampo was dismissed based on serious misconduct due to his racist treatment of his subordinates. Particularly, Ocampo was reported to have called his Myanmar crew members "animals," and worse, he withheld drinking water from them and rationed it out despite its availability. This pattern of discriminatory treatment against the Myanmar crew members showed that the acts were deliberately done. These incidents also displayed Ocampo'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 Ocampo has for himself and how he sees others as subhuman.

Racial discrimination is a grave issue. 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.

Evidently, Ocampo's misconduct is considered serious. 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.

(2) **YES**. Jurisprudence also dictates that gross negligence implies want of care in the performance of one's duties, while habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances.

Here, the incident only occurred once. The records do not show other instances in the past where Ocampo was remiss in the performance of his duties. Thus, Ocampo is correct to say that he cannot be dismissed on this ground. This singular event cannot be considered as habitual.

The over-discharge of methanol was also used as a ground to dismiss Ocampo for loss of trust and confidence. Managerial employees may be dismissed on this ground if there is some basis for the loss of confidence. Ocampo, 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. 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.

Therefore, it cannot be said that Ocampo acted willfully, intentionally, knowingly, or purposely when the chemical cargo was over-discharged from the vessel. It was never shown that he intentionally disregarded his duty to supervise the Chief Officer in the unloading of the cargo, or that he even intentionally ordered the over-discharge. Certainly, there was carelessness on his part, and it caused 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.

NIPPON PAINT PHILIPPINES, INC. *v.* NIPPON PAINT PHILIPPINES EMPLOYEES' ASSOCIATION

G.R. No. 229396, 30 June 2021, *THIRD DIVISION* (Inting, *J.*)

DOCTRINE OF THE CASE

There is diminution of benefits when the following requisites are present:

(a) The grant or benefit is founded on a policy or has ripened into a practice over a long period of time;
(b) The practice is consistent and deliberate;
(c) The practice is not due to error in the construction or application of a doubtful or difficult question of law; and
(d) The diminution or discontinuance is done unilaterally by the employer.

Here, the Court found that Nippon Paint's grant of additional holiday pay for Eidul Adha to its employees for a period of two (2) years ripened into a company practice. Thus, it can no longer withdraw the grant of such additional holiday pay without violating the principle of non-diminution of benefits. The Court was not convinced that Nippon Paint merely erred in granting the additional holiday pay for Eidul Adha considering that companies such as Nippon Paint have a meticulous financial audit every year. Thus, a yearly audit of its finances particularly in the years 2010 and 2011 as reflected in its financial statements should have made the purported error evident to it. And yet, it did not immediately rectify the purported error as it took two years for it to stop the grant of the additional holiday pay for Eidul Adha. Furthermore, its allegation that it only discovered the error in the payment of additional holiday pay for Eidul Adha is unsubstantiated by any evidence.

FACTS

Nippon Paint Philippines, Inc. (Nippon Paint) and Nippon Paint Philippines Employees Association (NIPPEA) entered into a Collective Bargaining Agreement (CBA) which provided that Nippon Paint agreed to pay all of its employees their holiday remuneration pay every year on regular holidays listed therein. In 2009, Republic Act No. 9849 (R.A. No. 9849) was enacted into law declaring the celebration of *Eidul Adha* as a regular holiday.

Nippon Paint employees received their holiday pay for the enumerated regular holidays in 2010 and 2011, including an additional holiday pay for the *Eidul Adha*. However, upon the execution of a new CBA in 2012, the *Eidul Adha* was not mentioned as one of the regular holidays. NIPPEA argued that consistent with the company practice, the employees were entitled to 200% of their regular daily rate for regular holidays, if unworked, and 300%, if worked. It claimed that the additional pay for the *Eidul Adha* has ripened into a company practice which Nippon Paint could no longer recover as it would be arbitrary, illegal, and tantamount to diminution of benefits.

The Voluntary Arbitrator (VA) ruled that the overpayment made by reason of payroll system error cannot be considered as a voluntary employer practice. The VA also noted that the 2007 CBA did not state that future regular holidays shall be automatically included in the list of holidays therein, and that being excluded from the list *Eidul Adha* cannot be deemed subsumed thereto. NIPPEA filed a Petition for Review before the Court of Appeals (CA).

The CA granted the petition and considered as company practice Nippon Paint's grant of an additional holiday pay for the *Eidul Adha* to its employees in addition to what was mandated by law. It declared that, as a rule, Nippon Paint employees have a vested right over the existing benefit which cannot be reduced, diminished, discontinued, or eliminated by the company.

ISSUE

Are Nippon Paint employees entitled to additional 100% pay in 2012 and 2013 for the *Eidul Adha* holiday?

RULING

YES. Article 100 of the Labor Code on the principle of non-diminution of benefits provides that employees have a vested right over existing benefits voluntarily granted to them by their employer. Any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued, or eliminated by the employer.

There is diminution of benefits when the following requisites are present:

(a) The grant or benefit is founded on a policy or has ripened into a practice over a long period of time;
(b) The practice is consistent and deliberate;
(c) The practice is not due to error in the construction or application of a doubtful or difficult question of law; and
(d) The diminution or discontinuance is done unilaterally by the employer.

Here, the Court found that Nippon Paint's grant of additional holiday pay for *Eidul Adha* to its employees for a period of two (2) years ripened into a company practice. Thus, it can no longer withdraw the grant of such additional holiday pay without violating the principle of non-diminution of benefits. The Court was not convinced that Nippon Paint merely erred in granting the additional holiday pay for *Eidul Adha* considering that companies such as Nippon Paint have a meticulous financial audit every year. Thus, a yearly audit of its finances particularly in the years 2010 and 2011 as reflected in its financial statements should have made the purported error evident to it. And yet, it did not immediately rectify the purported error as it took two years for it to stop the grant of the additional holiday pay for *Eidul Adha*. Furthermore, its allegation that it only discovered the error in the payment of additional holiday pay for *Eidul Adha* is unsubstantiated by any evidence.

The Court found as immaterial to the case the fact that *Eidul Adha* was not included in the 2012 CBA's list of regular holidays for which Nippon Paint's employees would receive additional holiday pay. The source of the entitlement of its employees to the subject additional benefit is not the CBA but company practice. All told, the Court found that its payment of additional holiday pay for *Eidul Adha* in favor of its employees has ripened into a company practice which can no longer be withdrawn by Nippon Paint. Thus, Nippon Paint has the obligation to pay its employees additional holiday pay for *Eidul Adha*.